

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001

Postal Rate Commission
Submitted 6/29/2005 8:56 am
Filing ID: 45553
Accepted 6/29/2005

Postal Rate and Fee Changes]
Pursuant to Public Law 108-18]

DOCKET NO. R2005-1

DAVID B. POPKIN MOTION TO COMPEL RESPONSE TO INTERROGATORIES DBP/USPS-110, 117, 122 SUBPARTS C AND D, 158, AND 170 SUBPARTS C-F AND H-I

I move to compel responses to the interrogatories submitted to the United States Postal Service that have either been objected to by them or have not been responded to within the appropriate time.

June 29, 2005

Respectfully submitted,

DAVID B. POPKIN, POST OFFICE BOX 528, ENGLEWOOD, NJ 07631-0528
R20051JJmtc

Interrogatories DBP/USPS-110, 117, and 122 subparts c and d were filed on June 3, 2005 and responses were due 14 days later or June 17, 2005. Interrogatory DBP/USPS-158 was filed on June 10, 2005 and response was due on June 24, 2005. Responses have not yet been received to these interrogatories.

On June 16, 2005, I submitted Interrogatory DBP/USPS-170. On June 27, 2005, the Postal Service filed an objection to subparts c-f and h-i of that interrogatory on the basis of improper follow-up and lack of relevance.

The interrogatory reads as follows:

DBP/USPS-170 Please refer to your response to DFC/USPS-70. [a] Is there some particular significance to the ZIP Code order of the data provided? [b] If so, what is it? [c] Please provide a complete listing of all of the characteristics that apply to each of the Fee Groups. [d] If there are Erent costs involved, please provide the cutoff values between each of the fee groups as appropriate. [e] Have the Erent cutoff values and/or the criteria for determining them changed since that system was established in the original rate case? [f] If so, please provide complete details. [g] What is the date used to determine the fee category listed in the attachment? [h] At what intervals does the Postal Service plan to update the fee

categories utilized? [i] When is the next reevaluation scheduled for? [j] Please advise those offices that have changed their fee category, the change involved, and the reasons for the change since the system was established in the original rate case.

First of all, I am somewhat confused as to why the Postal Service filed this Objection and then proceeds to respond to the subparts that have been objected to and provide what appear to be answers to the questions that were posed. This seems to be an inappropriate exercise in motion filing both on my part as well as on the Commission's need to respond.

The Postal Service asserts that "it is too late to introduce any of these or related issues into this proceeding."¹ The Postal Service is simply wrong in alleging lateness as a ground for objecting to my interrogatory. I must remind the Postal Service that no cutoff date for institutional interrogatories to the Postal Service was established in Presiding Officer's Ruling No. R2005-1/11, May 19, 2005. Ruling No. 11 established dates for completion of discovery only for Postal Service *witnesses*. The Ruling, at page 2, divided Postal Service witnesses into 2 groups, i.e., groups A and B. Otherwise, the Ruling is completely silent on the completion of discovery against the Postal Service.

In light of the Ruling's silence on this question, I turned to the Commission's procedural rules on discovery. The only rule applicable in this instance is Commission Rule 25, part (a), 39 C.F.R. §3001.25(a). That section of the rule provides that: "Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case." According to the procedural schedule attached to Ruling No. 11 (Attachment A), Group B witnesses will have their testimony entered into evidence on July 6 -8. Therefore, it appears that receipt of the Postal Service's direct case will be completed on July 8. Under Rule 25(a), I have until July 8, 2005, to pose institutional questions to the Postal Service of any type, so long as they are relevant to issues that the Commission will be evaluating in determining whether to recommend the rates requested by the Postal Service. The interrogatories that are the subject of the Postal Service's objection are permissible in that they are interrogatories posed to the Postal Service for an institutional response.

Furthermore, according to the procedural schedule attached to Ruling No. 11 (Attachment A), the Commission has stated that "Completion of discovery directed to the Service" would conclude on August 23, 2005.

¹ Postal Service Objection at 2.

Therefore, my institutional interrogatories filed on June 16, 2005, even if they were an improper follow-up, were timely filed as institutional interrogatories prior to both the July 8 and August 23 dates.

I believe that these interrogatories were proper follow-up of the Postal Services' response to DFC/USPS-70. The Postal Service's response was to provide a listing of ZIP Codes and their associated Fee Group. Subpart c of DBP/USPS-170 asks for a listing of the characteristics of each of the Fee Groups. It is perfectly appropriate to ask for a clarification on what each of the Fee Groups represented. Subparts d,e, and f proceed to elaborate and clarify the definitions that would have been provided in response to subpart c. Subparts h and i follow-up on subpart g and are designed to determine the time when the Postal Service will or will plan to update the Erent data utilized to determine the appropriate Fee Group for each facility.

The Postal Service claims that these issues lack relevance to the current proceeding, which is focused only on post office box fees rather than the fee structure. This is completely inappropriate. Since the fees that are being charged for post office boxes depend on the Fee Group as well as the size of the box, discovery with respect to establishment of Fee Groups is entirely appropriate.

For the reasons stated, I move to compel responses to the referenced interrogatories since they are reasonably calculated to lead to the discovery of admissible evidence.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

David B. Popkin June 29, 2005
